

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.12.2019

CORAM

**THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN**

CRP(NPD).No.4315 of 2014  
and  
M.P.No.1 of 2014

T.R.Muthumani ... Petitioner/Respondent

Versus

Shyla ... Respondent/Petitioner

**PRAYER:** This Civil Revision Petition has been filed under Article 227 of the Constitution of India, to set aside the petitioner and docket order of the learned Subordinate Judge's Court at Ootacamund, dated 04.07.2014, in E.P.No.16 of 2013 in I.A.No.68 of 2005 in H.M.O.P.No.31 of 2005.

For Petitioner : Mr.P.Valliappan

For Respondent : No appearance

**ORDER**

This Civil Revision Petition has been filed against the order passed by the learned Subordinate Judge, Ootacamund, in E.P.No.16 of 2013 in I.A.No.68 of 2005 in H.M.O.P.No.31 of 2005, dated 04.07.2014.

2 Brief facts of the case are as follows:

The petitioner herein/husband has filed a petition in H.M.O.P.No.31 of 2005, before the learned Subordinate Judge, Nilgiris, Uthagamandalam, under Section 13(1)(i) of the Hindu Marriage Act, for dissolution of marriage solemnized between him and the respondent herein/wife on 30.05.1993, on the ground that the respondent herein/wife is having illicit relationship with one Sathiyar and pending petition, respondent herein/wife has filed an application in I.A.No.68 of 2005, before the same Court, under Section 25 of the Hindu Marriage Act, for interim maintenance. Both HMOP and IA was taken together and were disposed by a common order, dated 20.10.2005, stating that in HMOP.No.31 of 2005, marriage between the petitioner/husband and the respondent herein/wife has been dissolved and in I.A.No.68 of 2005, interim maintenance of Rs.3,000/- has been fixed. As the interim maintenance awarded under the I.A.No.68 of 2005 has not paid, the wife/respondent herein filed a petition in E.P.No.16 of 2013, wherein, the Court below has ordered for attachment of salary to execute the interim maintenance awarded by the Sub Court, Ooty. Aggrieved against the said order passed in E.P.No.16 of 2013, the petitioner/husband has preferred this Civil Revision Petition.

3 The learned counsel for the revision petitioner/husband would contend that the revision petitioner has also filed E.A.No. of 2013 under Section 25(2)(3) of the Hindu Marriage Act, 1955, for modification of the interim award for maintenance on the ground that since divorce has been granted on the ground of adultery and that she is now living with the other person and their son has also attained majority and without passing any order in the above said E.A.No. of 2013, without taking into consideration of the said application, the EP has been ordered, whereby his rights are prejudiced.

4 Heard the learned counsel for the petitioner and perused the materials placed on record.

5 From the Court records, it is seen that the respondent herein/wife was served in this revision petition as early as on 19.12.2014 and her name has also been printed. When the matter was called today (20.12.2019), there was no representation. Interim stay granted by this Court in CMP.No.1 of 2014 is still in force.

6 Taking into consideration, the contention raised by

**RMT.TEEKAA RAMAN., J.**

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the learned counsel for the petitioner/husband and his stand in the counter affidavit filed before the EB Court relating to other EP.No.24 of 2011 and also considering the fact that the petitioner herein/husband has already filed application under Section 25(2)(3) of the Hindu Marriages Act, this Civil Revision Petition is allowed.

7 In the result, the Civil Revision Petition Stands allowed with the above observations and the order passed in E.P.No.16 of 2013 on 05.02.2013 is set aside and the matter is remitted back to the Sub Court, Nilgiris at Ooty and the Sub Judge is also directed to take up the petition filed by the husband under Section 25 (2)(3) of the Hindu Marriage Act 1955 and to conduct joint enquiry on both applications and pass orders in accordance with law. No costs. Consequently, connected miscellaneous petition is closed.

WEB COPY

**20.12.2019**

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Speaking Order:Yes/No

To

The Subordinate Court, Ootacamund.

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